

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.**

**COMPANY APPLICATION NO.76 OF 2007
IN
COMPANY PETITION NO.343 OF 2001**

Gujarat Sidhee Cement Ltd.	...Petitioner.
Vs.	
Official Liquidator (Rainbow Corporation Ltd.)	...Respondent.
And	
Union Bank of India.	... Applicant.

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Mr.Chirag Balsara i/b. N.I. Bakali for the Applicant.
Mrs. K.V. Gautam, Dy.Official Liquidator present.
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CORAM :DR.D.Y.CHANDRACHUD, J.
April 20, 2007.

P.C.:

An order of winding up came to be passed against the Company in liquidation (Rainbow Corporation Ltd.) on 18th February 2005.

The application before the Court has been moved by the Union Bank of India which is a secured creditor. The reliefs that have been prayed are that (i) The Official Liquidator be directed to settle the claim of the workers of the Company in liquidation under Section 529A of the Companies' Act, 1956 to enable the Applicant to apportion a portion of the claim ranking pari pasu with the

Applicant, from the sale proceeds of the mortgaged properties to be realised through the Debts Recovery Tribunal upon the disposal of the mortgaged assets; and (ii) In the alternative, the Applicant be permitted to appropriate the balance amount after keeping aside a sum of Rs.3,43,016/- being the claim received by Official Liquidator.

In December 2006 a status report was filed by the Official Liquidator setting out that the following claims were received by the Liquidator : (i) Workers: Rs.3,43,016/-; (ii) Secured Creditors: Rs.4,76,08,360/- and (iii) Ordinary claims Rs.1,05,64,564/- : total Rs.5,85,15,940/-. An additional affidavit has been filed by the Official Liquidator on 20th April 2007.

The Applicant has obtained a recovery certificate in the proceedings before Debts Recovery Tribunal for the recovery of the sum of Rs. 18.20 crores together with interest at 14.5% per annum from 22nd August 2003. In the reply filed by the Liquidator, it has been stated that the amount of the claim of the Applicant which stands admitted as on the date of the order of winding up is Rs.22,35,48,163/-. The Applicants have in an affidavit dated 9th

April 2007 stated that four properties which were mortgaged in favour of the Applicants were sold through the Debts Recovery Tribunal and an amount of Rs.233 lakhs has been realised out of which a sum of Rs.142 lakhs has been received, while the balance of Rs.91 lakhs has been retained in FDR by the Recovery Officer of the Debts Recovery Tribunal. The reply of the Official Liquidator notes that there is one more secured creditor, namely, the Gujrat Industrial Investment Corporation Ltd. The amount claimed by the GIIC is Rs. 4.76 crores of which the Liquidator has admitted a claim to the extent of Rs. 3.60 crores. Now, a perusal of the file of the Official Liquidator which has been produced before the Court would prima facie demonstrate that GIIC has sanctioned financial assistance by a letter dated 16th February 1999. The securities which were created in favour of GIIC consisted of a mortgage and hypothecation of movables in connection with a Jetty project of the Company at Okha. Counsel appearing on behalf of the Applicant is, therefore, prima facie correct in submitting that the securities which are created in favour of GIIC are separate and distinct from those in respect of which the Applicant claims the first charge. In so far as the workers' claims are concerned, it would appear from the status report submitted by the Official Liquidator that an amount

of Rs. 3.43 lakhs was the total extent of the claims which were received.

Having regard to all these facts and circumstances of the case, it would, in my view, be proper to permit the applicant to appropriate the amounts realised from the sale of the assets towards the claim of the Applicant in pursuance of the recovery certificate issued by the Debts Recovery Tribunal, after giving due credit for such amount as has already been realised and subject to the filing of an undertaking that the Applicant would bring back such amounts as may, inter alia, be found due and payable under Section 529A either to the workers or to any other secured creditors holding a pari pasu charge in respect of the same security within a week of being called upon to do so at such rate of interest as may be awarded by the Court. Counsel appearing on behalf of the Applicant also stated on instructions that the Applicant is willing to file such an undertaking and will do so within two weeks from today. Subject to the filing of the undertaking within a period of two weeks in the aforesaid terms and upon a verification by the Official Liquidator within two weeks of the terms of the undertaking, the Applicant is permitted to carry out an apportionment as permitted hereinabove. The Company Application is accordingly disposed

of.

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